IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2725 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMAJI SAVADANJI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2725 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 02/05/2002

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 19-1-2002

passed by the District Magistrate, Banaskanth at Palanpur in exercise of powers under Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. I have heard learned advocate for the petitioner at length and learned AGP, Mr.S.J.Dave for the respondents. I have also perused the material on record.

3. Though various contentions were raised by the learned advocate for the petitioner in the petition, he has restricted his arguments on the point of delay in deciding the representation and communicating the same to detenu. According to learned advocate for the petitioner, the detenu has submitted a representation to the Advisory Board on 13-2-2002 and though it has been received by the authority on 16-2-2002, the authority of the State Government has replied after approximately about a month, i.e. on 11-3-2002 and communicated to the detenu. In support of his argument, he has produced a letter dated 11-3-2002 sent by the authority which is ordered to be taken on record. Mr.Prajapati, learned advocate for the petitioner has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the representation dated 13-2-2002 has been received by the Advisory Board on 16-2-2002, however it has been replied on 11-3-2002, i.e. after a period of approximately about

a month and communication dated 11-3-2002 has been sent to the detenu. Though affidavit-in-reply has been filed on behalf of Union of India and the detaining authority, no satisfactory explanation has been given in any of the affidavits and hence, same remained uncontroverted. However, no affidavit has been filed on behalf of the State. Aforesaid Affidavits are ordered to be taken on record.

5. Since no explanation has been putforth by the concerned authorities in their affidavits for not deciding the representation in time, the order of detention is illegal and the same cannot be sustained.

6. Learned advocate for the petitioner has made a statement at the bar that the petitioner is not interested to continue his licence of fair price shop and he has already sent an application to this effect to the concerned authority.

7. The petition is allowed. The impugned order of detention dated 19-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Shri Ramaji Savadanji Vaghela is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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